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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/608,692	06/26/2003	Richard John Ogle	18382	9687
23556	7590	11/08/2005		
KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956			EXAMINER BLAKE, CAROLYN T	
			ART UNIT 3724	PAPER NUMBER

DATE MAILED: 11/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/608,692	Applicant(s) OGLE ET AL.	
	Examiner Carolyn T. Blake	Art Unit 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2005.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 1-10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-21 is/are rejected.
- 7) ☒ Claim(s) 22 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 June 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Group II in the reply filed on August 15, 2005 is acknowledged. The traversal is on the ground(s) that (a) the text related to the work piece in the method claims does not make those claims distinct from the apparatus; and (b) the field of search for the method and apparatus is coextensive. This is not found persuasive because the method and apparatus are patentably distinct. According to MPEP 806.05(e), the inventions are distinct if either or both of the following can be shown: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. In this case (2) applies because the apparatus as claimed can be used to practice another and materially different process such as a cutting method comprising the step of cutting an extruded material. This method does not require the step of cutting an article web. The work piece is positively claimed, and thus the text related to the work piece does make the method claims distinct from the apparatus. Regarding the argument the field of search is coextensive for the method and apparatus, this is not found persuasive because each group has a separate status in the art as shown by its classification, thereby requiring its own unique search. It would place burden on the examiner to review these claims.

The requirement is still deemed proper and is therefore made FINAL.

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2. Claims 1-10 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim.

### ***Drawings***

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 54a (FIG 2A).

4. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

5. Claim 11 is objected to because of the following informalities: "has been" (lines 5 and 6) should be deleted. Appropriate correction is required.

6. Claim 12 is objected to because of the following informalities: "has primary insert" (line 1) should be deleted. Appropriate correction is required.

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7. Claim 15 is objected to because of the following informalities: the phrase "a longitudinal direction of said cutting method" is confusing. Change to - a longitudinal direction of said article web- - or equivalent. Appropriate correction is required.

8. Claim 17 is objected to because of the following informalities: the phrase "said first component layer" lacks proper antecedent. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Dayley (5,388,489).

Regarding claim 11, Dayley discloses a cutting method comprising: cutting an article web (30) with a rotary cutter (28), wherein said rotary cutter (28) includes an axis of rotation and an outer peripheral, rim surface; a cutter array located on said rim surface, said cutter array having at least one cutter die (58), and said cutter die (58) having a die perimeter and a die height; a resilient, primary insert (126) joined to said rotary cutter and located within said die perimeter and operatively adjacent to said die perimeter, said primary insert (126) having an operatively high resistance to deformation.

Regarding claim 12, Dayley discloses said primary insert (126) has a substantially annular configuration.

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11. Claim 11 is rejected under 35 U.S.C. 102(b) as being anticipated by Sablotsky et al (5,405,486).

Sablotsky et al disclose a cutting method comprising: cutting an article web with a rotary cutter (36), wherein said rotary cutter (36) includes an axis of rotation and an outer peripheral, rim surface; a cutter array located on said rim surface, said cutter array having at least one cutter die (30), and said cutter die (30) having a die perimeter (32) and a die height; a resilient, primary insert (100) joined to said rotary cutter and located within said die perimeter (32) and operatively adjacent to said die perimeter, said primary insert (100) having an operatively high resistance to deformation.

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sablotsky et al.

Sablotsky et al fail to expressly disclose the Compression Deflection of the resilient primary insert. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a resilient material with the Compression Deflection claimed since it has been held the selection of a material on the basis of suitability for the intended use is obvious. *In re Leshin*, 125 USPQ 416 (CCPA 1960).

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14. Claims 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sablotsky et al as applied to claim 11 above, and further in view of Menard et al (6,264,784).

Regarding claims 15, 17, and 18, Sablotsky et al disclose a multi-layered work piece, but fail to disclose the work piece as claimed. However, Menard et al disclose a cutting method comprising cutting an article web with a rotary cutter (33) wherein the article web comprises: a relatively low-toughness second component layer (6), which extends substantially continuously along a longitudinal direction; a substrate layer (7); a plurality of individual absorbent members (5) which have been positioned at spaced apart locations along said longitudinal direction and have been sandwiched between a first component layer (4) and said substrate layer (7); a first component layer (4); and a pattern of adhesive (2) that has been disturbed at least along a portion of a bonding region of the article web and between said first component layer (4) and said substrate layer (7). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Sablotsky et al method to employ a different work product, such as the one disclosed by Menard et al.

Regarding claim 16, the Sablotsky- Menard combination fails to disclose a tensile strength of the second component layer as claimed. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a second component layer with the tensile strength claimed since it has been held the selection of a material on the basis of suitability for the intended use is obvious. *In re Leshin*, 125 USPQ 416 (CCPA 1960).

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15. Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sablotsky et al in view of Menard et al as applied to claims 17 and 18 above, and further in view of Smith et al. The Sablotsky-Menard combination fails to expressly disclose the resilient insert creates a perimeter bond. However, Smith et al teach the use of a resilient insert (46) in conjunction with a cutting member to seal an article from a web. The Smith et al method allows sealing and cutting operations to occur in one step and at one station. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the Sablotsky-Menard resilient inserts for sealing, as disclosed by Smith et al, for the purpose of sealing and cutting in a single work station.

16. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sablotsky et al as applied to claim 11 above, and further in view of Van Iten et al (4,886,632).

Sablotsky et al fail to expressly disclose the rotary cutter surface speed. However, Van Iten et al disclose a cutting method comprising cutting an article with a rotary cutter wherein cutter surface speeds greater than 195 cm/sec can be attained. See col. 9, lines 13-19. This speed allows for fast production of work products. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have a rotary cutter surface speed of at least 195 cm/sec, as disclosed by Van Iten et al, with the Sablotsky et al method for the purpose of manufacturing large quantities of work products in a short amount of time.



***Allowable Subject Matter***

17. Claim 22 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Messmer, Jr. (1,670,898) and Bunge (6,925,918) both disclose a rotary cutter comprising a supplemental insert located within a primary insert perimeter wherein said supplemental insert has a height which is relatively higher than the primary insert height.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn T. Blake whose telephone number is (571) 272-4503. The examiner can normally be reached on Monday to Friday, 8:00 AM to 5:30 PM, alternating Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on (571) 272-4514. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CB

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October 26, 2005



KENNETH E. PETERSON  
PRIMARY EXAMINER